COMMONWEATH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
PETITION OF NPCR, INC.	)	CASE NO. 2003-00143
D/B/A NEXTEL PARTNERS	)	
FOR DESIGNATION AS	)	
AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)	
IN THE COMMONWEALTH OF KENTUCKY	)	

COMMENTS OF THE TDS TELECOM COMPANIES

Leslie County Telephone Company, and Lewisport Telephone (TDS Telecom) respectfully submit these comments regarding the Petition of NPCR, Inc (D/B/A Nextel Partners), to be Designated as an Eligible Telecommunications Carrier ("Petition") in its commercial mobile radio service ("CMRS") license in certain areas in Kentucky. Each of the TDS Telecom companies is a Rural Telephone Company, as that term is defined in 47 U.S.C. § 153(37), and provides service in Kentucky.

I. Introduction

Nextel Partners has filed a petition to be designated as an ETC in its cellular license area in Kentucky, which includes portions of study areas served by BellSouth and six Rural Telephone Companies. The affected Rural Companies include two TDS Telecom properties, Leslie County Telephone Company and Lewisport Telephone Company.

Because Nextel Partners seeks to be designated as an ETC in portions of these rural study areas, it must demonstrate that it meets the minimum criteria of Section 214(e)(1) and that designating it as an ETC in the rural study areas "is in the public interest."[1] Generally, Nextel Partners is required to serve the entirety of every rural company's study area in which it is designated as an ETC.

II. Service Provided By The TDS Telecom Kentucky LECs

The Leslie County and Lewisport Telephone companies are incumbent local exchange carriers, which have provided high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service areas and are certified as ETCs. They are subject to minimum service requirements and are required to respond to all requests for service within their certificated area. Neither Leslie County or Lewisport have held orders for telephone service. The companies also provide Lifeline and Line Up service to eligible low-income customers.

III Nextel Partners Does Not Meet The Statutory And Regulatory Requirements For ETC Designation.

Contrary to the assertions set forth in its petition, Nextel Partners does not meet the statutory and regulatory requirements for ETC designation by the FCC pursuant to Section 214(e)(1). Nextel Partners states the following in its petition (Page 2, Section B): "Nextel Partners offers or <u>will offer</u> upon designation as an ETC in the Designated Areas, all of the services and functionalities required…". Regarding toll limitation, the petition states "As required by the FCC's rules, Nextel Partners, upon designation as an ETC, <u>will make</u> available to low-income customers a solution…"(page 4, # 8)**make this a footnote.** The petition also states that "Nextel Partners serves the rural companies study areas in their entirety. {sec II, p. 5}. However, footnote 7 on the same page serves as a disclaimer

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[1] 47 U.S.C. § 214(e)(2).

to that statement. Nextel Partners does not offer all required services and functionalities supported by the Federal High-Cost Universal Service program. In contrast, each of the rural companies was required to demonstrate that they met the universal service criteria prior to becoming eligible to receive funding. Because Nextel Partners does not meet the statutory and legal requirements for ETC designation, the petition for ETC designation should be denied.

IV. Designation Of Nextel Partners As An ETC In TDS Telecom's Study Area Is Not In The Public Interest

TDS Telecom believes that designating Nextel Partners as an ETC in the rural company's study areas is not in the public interest.

A. NEXTEL PARTNER'S Public Interest Argument Conflicts With Section 214(e)(2)

Nextel Partners offers the same flawed argument as many other CMRS ETC applicants with respect to the public interest issue. Reduced to its most basic elements, the argument is that designating additional ETCs in a rural study area creates competition, competition is in the public interest, and therefore designating Nextel Partners as an additional ETC in the rural study areas is in the public interest.

If accepted, this argument nullifies the public interest test contained in Section 214(e)(2) because it results in the conclusion that designating additional ETCs in rural study areas is always in the public interest. If increasing competition were enough to satisfy the public interest test, Congress never would have limited the designation of additional ETCs in rural study areas to those instances when such designation is in the public interest. Instead, it could have applied the same standard to both rural and non-rural areas.

Congress, however, by adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in rural study areas, recognized that it does not always make sense to designate additional ETCs in such areas. Therefore, the Commission should not accept Nextel Partners blanket public interest argument.

B. Designating Nextel Partners As An ETC Will Not Increase Competition

CMRS providers currently offer service within the Leslie County's and Lewisport Telephone Company's service areas, and giving CMRS providers USF will not somehow transform its service into a new, competing service. Therefore, the benefits, whatever they may be, that flow from competitive entry will not result from designating Nextel Partners as an ETC. Consumers will not experience the host of benefits that Nextel Partners claims will result from designating it as an ETC in the rural study areas.

C. Designating Nextel Partners As An ETC Will Result In Cream Skimming Or Similar Harms

Designating Nextel Partners as an ETC in the rural study areas will result in cream skimming. Cream skimming generally refers to the problem of an additional ETC serving low cost areas while receiving USF that is based on averaged costs to serve the entire study area. The harm in this, of course, is that the ETC receives too much USF relative to the costs to serve the low cost area where it provides service without incurring the additional expense of also serving the high cost areas. Generally, disaggregating USF solves this by apportioning USF among cost zones so that the amount of USF that flows to each cost zone reflects the costs to serve that zone.

Disaggregation does indeed solve the cream skimming problem as long as the billing address and the service address are the same, which is hardly ever the case with mobile service. Customers rarely use their mobile phones at home, which is likely to be the billing address. To the extent that Nextel Partners customers who live in high cost areas primarily use their phones in low cost areas, which is most often the case in rural study areas, Nextel Partners will receive too much USF relative to the costs to provide service in the area where the service is actually provided. USF can even be exported out of the intended study area if Nextel Partners's customer uses her mobile phone in a study area that is different from the one where she lives.

Whether this is called cream skimming, arbitrage, gaming, or something else, it is not in the public interest to allow it to occur. USF is aimed at defraying the costs of maintaining a network to make service universally available within a study area; it should not be redirected to any other purpose.

V. Proposed Rule Changes Could Alter The Outcome Of This Proceeding

Proposed changes to the USF mechanism are currently pending. Of greatest concern to TDS Telecom are proposals that would reduce the amount of USF that they receive when additional ETCs are designated in their study areas. Such changes, especially in conjunction with the loss of access revenues that the Independents are already experiencing as a result of customers using their mobile phones for toll calls, could be disastrous to the continued provision of universal service in rural areas. If rural companies lose USF when additional ETCs are designated in their study areas, rural companies could find themselves losing USF while still being required to maintain a network to serve all potential customers.

CMRS carriers present a particularly significant problem in this regard because customers generally have both a wireline and a wireless phone. While USF is aimed at defraying the costs of the network, the costs of which do not change when the USF associated with a customer is ported to another ETC, a rural company could even find itself being required to serve customers for which they no longer receive USF. Additionally, to the extent that the various regulatory bodies designate CMRS ETCs to serve less than a rural company's entire study area, a situation could arise in which it is no longer economically viable for the rural company to continue providing service, yet there will be no other ETC required to, or prepared to serve the most rural, high cost areas.

VI. SUMMARY

TDS Telecom believes designating Nextel Partners as an ETC in the rural study areas is not in the public interest, that such designation will not bring to consumers the benefits of new competitive entry, and that Nextel Partners's public interest argument should be rejected.

Respectfully Submitted,

LIEBMAN AND LIEBMAN

JAMES DEAN LIEBMAN
403 West Main Street
P. O. Box 478
Frankfort, KY 40602

ATTORNEY FOR LESLIE COUNTY
TELEPHONE COMPANY AND
LEWISPORT TELEPHONE (TDS TELECOM)

CERTIFICATE OF SERVICE

I, James Dean Liebman, do hereby certify that I have this 17th day of July, 2003, mailed a true and complete copy of the foregoing Comments to each of the following:

Honorable Elizabeth Schofield Brown
Corporate Counsel
Nextel Partners, Inc.
13405 Eastpoint Centre Drive, Suite 100
Anchorage, KY 40223

Honorable Lindsey W. Ingram, Jr.
Stoll, Keenon & Park, LLP
300 West Vine Street
Suite 2100
Lexington, KY 40507-1801

Donald J. Manning
Vice President & General Counsel
NPCR, Inc.
D/B/A Nextel Partners
4500 Carillon Point
Kirkland, WA 98033

Honorable F. Keith Brown
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40265-0369

Honorable Ronald J. Jarvis
Attorney at Law
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, DC 20007

Honorable Timothy R. Pickrel
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369

W. Allen Gillum
Mountain Rural Telephone Coop. Corp.
Dba Mountain Telephone Long Distrance
405 Main Street
P. O. Box 399
West Liberty, KY 41472-0399

Honorable Stephen C. Lentz
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369

Honorable David A. Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369

JAMES DEAN LIEBMAN